

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLEE**





To be argued by:  
Arthur A. Chalenski, Jr.

**Docket No. 77-1056**

In The  
**United States Court of Appeals**

For the Second Circuit

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

— v —

ALFRED D. McGILBERRY,

*Defendant-Appellant.*

On Appeal From the United States District Court  
For the Northern District of New York

**BRIEF FOR APPELLEE,**  
United States of America

PAUL V. FRENCH  
United States Attorney  
Northern District of New York

ARTHUR A. CHALENSKI, JR.  
Assistant United States Attorney  
Federal Building & Courthouse  
Syracuse, New York 13202  
(315) 423-5165

*Attorneys for Appellee*

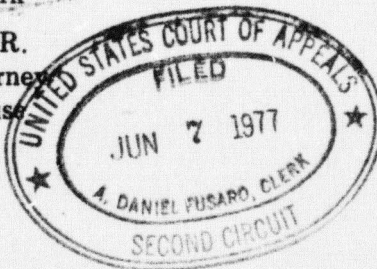






TABLE OF CONTENTS

	Page
Table of Authorities Cited . . . . .	11
Statement of the Issues . . . . .	1
Statement of the Case . . . . .	2
Statement of the Facts . . . . .	3
ARGUMENT:	
POINT I - The evidence was sufficient to sustain the jury verdict below	10
POINT II - The burden of proof in this case never shifted to the defendant	18
POINT III - The trial court did not abuse its discretion in limiting the scope of cross-examination	19
POINT IV - The trial court properly imposed a special condition of probation that the defendant make restitution	22
CONCLUSION . . . . .	25
ADDENDUM . . . . .	26

## TABLE OF AUTHORITIES CITED:

<u>Cases:</u>	Page
<u>Glasser v. United States</u> , 315 U.S. 60, 62 S.Ct. 457 (1942) . . . . .	10
<u>Gross v. United States</u> , 228 F.2d 612 (8th Cir. 1956) . .	25
<u>Hamling v. United States</u> , 418 U.S. 87, 94 S.Ct. 2887 (1974) . . . . .	21
<u>United States v. Berrigan</u> , 482 F.2d 171, 174-5 (3rd Cir. 1973) . . . . .	22
<u>United States v. Cacioppo</u> , 517 F.2d 22 (8th Cir. 1975) . .	10
<u>United States v. Corr</u> , 543 F.2d 1042 (2d Cir. 1975) . . .	21
<u>United States v. Landay</u> , 513 F.2d 306 (5th Cir. 1975) . .	25
<u>United States v. Mariani</u> , 539 F.2d 915 (2d Cir. 1976) . .	10
<u>United States v. Morrison</u> , 43 F.R.D. 516 (N.D. Ill. 1967)	10
 <u>Statutes:</u>	
18 U.S.C. 3651 . . . . .	22
208(d), Social Security Act, 42 U.S.C. 408(d) . . . . .	2
 <u>Rules &amp; Regulations:</u>	
Fed. Rules Cr. Proc., Rule 12(b)(2) . . . . .	22
Fed. Rules Cr. Proc., Rule 30 . . . . .	10
20 C.F.R. §404.306(a)(5) . . . . .	23
20 C.F.R. §404.308(a) . . . . .	23
20 C.F.R. §404.501 . . . . .	24
20 C.F.R. §404.901 . . . . .	24
20 C.F.R. §404.918 . . . . .	25
20 C.F.R. §404.1531 . . . . .	16



**IN THE  
United States Court of Appeals  
For the Second Circuit**

---

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

- v -

ALFRED D. MCGILBERRY,

Defendant-Appellant.

---

On Appeal From the United States District Court  
For the Northern District of New York

---

**BRIEF FOR APPELLEE,  
United States of America**

---

STATEMENT OF THE ISSUES

- I. Whether the evidence was sufficient to sustain the jury verdict below.
- II. Whether, under the jury instructions as given, the burden of proof shifted to the defendant.
- III. Whether the trial court abused its discretion in limiting the scope of cross-examination.
- IV. Whether the trial court properly imposed a special condition of probation that the defendant make restitution, as directed, under a plan to be formulated by the Probation Office.

STATEMENT OF THE CASE

On February 4, 1976, a fifteen-count Indictment was filed with the United States District Court for the Northern District of New York, charging the defendant with violating Section 208(d) of the Social Security Act, 42 U.S.C. §408(d). In particular, the defendant was charged with filing three applications for disability insurance benefits: the first application was on behalf of himself, the second on behalf of his daughter, Michelle, and the third on behalf of his daughter, Monique. The Indictment charged that the defendant was employed by five employers from January 1971, through December 1973, and that a violation occurred as to each employer with reference to each of the three applications so that the Indictment contained fifteen counts.

Trial of the case commenced on July 19, 1976, before the Honorable Lloyd F. MacMahon, United States District Judge for the Southern District of New York, Sitting by Designation. On July 19, 1976, prior to selecting the jury, Counts eleven, twelve and thirteen of the Indictment were dismissed on motion of the Government.

On July 20, 1976, the jury found the defendant guilty on Counts three, four, five, eight, nine, ten, fourteen and fifteen of the Indictment, and acquitted the defendant on Counts one, two, six and seven.



On September 16, 1976, Judge MacMahon sentenced the defendant to one-year's imprisonment on each Count, with all but three months suspended. The defendant was placed on probation for the remainder of the sentence with a special condition of probation that the defendant make restitution, as directed, under a plan to be formulated by the Probation Office. The sentences on all Counts run concurrently with each other.

#### STATEMENT OF THE FACTS

On January 4, 1971, the defendant applied for disability insurance benefits for himself and for his daughter, Michelle McGilberry (Gov't Ex. 1A and 1B, Appellant's Brief A1 and A5).<sup>\*</sup> On the fourth page of the defendant's "Application for Disability Insurance Benefits" (Gov't Ex. 1A) is set forth the following language:

YOU MUST NOTIFY THE SOCIAL SECURITY  
ADMINISTRATION PROMPTLY IF . . . You  
GO TO WORK whether as an employee or a  
self-employed person. (Emphasis from  
original)

---

\* Pages attached to the Addendum to Appellant's Brief will hereinafter be designated with the prefix A and the page number.

The defendant checked the "yes" box on the following question: "Do you agree to notify the Social Security Administration promptly if any of the above events occur?"

At item number 10 of his application, the defendant listed four prior employers. The most recent he listed was Liss Bakery, 54th Street, Philadelphia, Pennsylvania. As to Liss Bakery, the defendant stated in his Application that his work there began and ended in September, 1970, and was "for 8 or 9 days only." On January 20, 1971, the Social Security Administration ("Administration") received a statement from Liss Bakery, (Gov't Ex. 1D ),\* wherein Liss Bakery stated that the defendant earned \$675.00 from October 1, through December 31, 1970.

On February 9, 1971, the Administration, by its designated Agent, the New York State Department of Social Services, communicated with the defendant by telephone (Tr. 39). The purpose of the call was to determine when he stopped working (Gov't Ex. 1E, A18). The defendant told the interviewer that he was working up until December 15, 1970. The defendant did not reveal any other employment at that time, but he did state that he had been attending a clinic at the Veterans Administration Hospital at least

---

\* Annexed to this Brief.



once a week, and sometimes two or three times a week (A18). The interviewer concluded that "claimant finally stopped working because of ailment on 12/15/70, therefore, that is the earliest onset that can be established." (Gov't Ex. 1E, A19). The defendant failed to report that he had been employed by the Melbourne Hotel, Inc. during January, 1971, and that he had earned wages of \$117.50 (Gov't Ex. 6, A17).

Following the telephone call on February 9, 1971, the defendant was awarded benefits for himself and for his daughter, Michelle, commencing July, 1971 (Tr. 30, Gov't Ex. 1F).

Following that interview of February 9, 1971, the defendant worked for various employers, but he did not report any of these to the Administration until the Summer of 1972. In particular, during March, 1971, the defendant worked at the Goldman Hotel and earned wages of \$135.00 (Gov't Ex. 7, A16). From April, through December, 1971, the defendant worked at the S. M. Flickinger Co., Inc. (Super Duper), and earned wages exceeding \$5,200.00 for nine months (Gov't Ex. 8, A15).

On March 10, 1972, the defendant applied for child's insurance benefits on behalf of his daughter, Monique Y.

McGilberry (Tr. 28, Gov't Ex. 1C, A9). Benefits were awarded pursuant to this application, commencing November, 1971 (Tr. 31, Gov't Ex. 1G).

During March, April and May, 1972, the defendant worked for Syracuse University and earned wages exceeding \$1,690.00.

The defendant did not report any of the preceeding employment to the Social Security Administration until July 4, 1972 (Tr. 38). On July 4, 1972, the defendant signed a form inquiry wherein he reported that he had worked for Syracuse University. However, he did not report any of his other prior work (Gov't Ex. 1H, A30-33). Government Exhibit 1H (A30) is a form letter dated June 20, 1972, sent to the defendant stating that wages had been reported to his Social Security Record for the period beginning January, 1972. The form described in detail that the continuation of his disability benefits depends on whether he can work. The defendant responded by explaining in detail, at items 5 and 8, why he stopped working and how his impairment affected his ability to do work; but when called upon to report his work activity at items 2, 3 and 4, the defendant omitted the amount of wages he had earned. On July 4, 1972, the defendant still had not notified the Administration of any of his employment during 1971.



Prior to September 22, 1972, the defendant was asked to arrange an interview at the Social Security Office to discuss his earnings and any changes in his medical condition (Tr. 39), Gov't Ex. 11). On September 29, 1972, the defendant came into the Social Security Office at which time a "Report of Contact" form was completed and three "Work Activity Reports" and a "Report of Continuing Disability Interview" were completed (Tr. 56, Gov't Ex. 1J, A20-25). The three Work Activity Reports covered his three employers during 1971: Melbourne Hotel, Goldman Hotel, and S. M. Flickinger Company, Inc. The defendant, however, did not report that he was then employed by Sam Dell's Dodge Corp. (Tr. 58).

Prior to the September 29, 1972 interview, and during August, 1972, the defendant commenced employment with Sam Dell's Dodge Corp. (Gov't Ex. 10, A13). He earned \$76.00 during that month. During September, 1972, the defendant earned \$1,009.39 at Sam Dell's Dodge Corp. The defendant continued to work for Sam Dell's Dodge through December, 1973, and during the fifteen month period from October, 1972 until December 1973, he earned over \$25,500.00. Instead of reporting his employment at Sam Dell's Dodge, the defendant told the interviewer, Bonnie Vanier, on September 29, 1972, when asked about his daily activities at that time, that he:

Usually goes to bed at 7:30 p.m. Reads and watches T.V. during the day. Has been offered many jobs. Hired until they take pictures of my chest. Stays in most of the day. Cares for his personal needs unless having an attack. Coughs until breathless. (Tr. 61, Gov't Ex. 1J, A25).

The interviewer observed during the course of the September 29 interview that the defendant appeared "intelligent" and had no obvious difficulties with his sight or hearing (Tr. 65, Gov't Ex. 1J).

On November 15, 1973, the defendant first reported his employment with Sam Dell's Dodge Corp. during the course of an interview with Loretta Wickes (Tr. 68, Gov't Ex. 1K, A26-29). This communication was also initiated by the Social Security Administration (Tr. 39-40).

On November 19, 1973, a representative of the Administration telephoned the defendant to advise him that his benefits were being cancelled because of work activity (Gov't Ex. 1N, A34). The defendant on that date said that he had previously been interviewed by a Mrs. Wickes who had told the defendant that "she remember[ed] him having been in before and that she would try to find the reports she sent to the District Office that he had been working." Loretta Wickes testified for the Government at the trial that she interviewed the defendant on November 15, 1973, that except for that occasion she had



never spoken to the defendant either by phone or in person (Tr. 69), and that she did not tell the defendant that she had recalled seeing him on other than that occasion (Tr. 73).

On August 27, 1974, the defendant signed a "Voluntary Statement to Explain Irregularity" (Tr. 75, Gov't Ex. 1L, A35-38). In the Statement the defendant contended that he had reported his employment with S. M. Flickinger in March, 1971, and that he came in to discuss his work at the Melbourne Hotel in January, 1971, and the Goldman Hotel also in 1971. The defendant also stated that he notified the Social Security Administration of his work activity before July of 1972, and that he saw the people writing down and documenting what he had said. The defendant finally stated that before he took the job at Sam Dell's Dodge in August of 1972, he came into the Syracuse Office in person and told them he would be taking the job. The Administration trains its personnel to make written reports of communications such as those alleged (Tr. 35-37), but there is no record of the defendant having made any of the above reports he referred to on August 27, 1974.

POINT ITHE EVIDENCE WAS SUFFICIENT TO  
SUSTAIN THE JURY VERDICT BELOW

The defendant challenges the sufficiency of the evidence as to fraudulent intent. At pages 9 and 10 of his Brief he appears to be trying to establish that specific intent is required to be proved by the Government. However, this issue was conceded by the Government in its trial memorandum and the trial court did charge that specific intent was required as an element of the crime (Tr. 118-123). See United States v. Morrison, 43 F.R.D. 516 (N.D. Ill. 1967); United States v. Cacioppo, 517 F.2d 22 (8th Cir. 1975). In any event, since the defendant took no exception to the charge (Tr. 125), the jury instructions control the discussion of the law applicable to the case. F.R.Cr.P. 30.

In considering the sufficiency of the evidence, the court must consider the evidence in the light most favorable to the Government. Glasser v. United States, 315 U.S. 60, 80, 62 S.Ct. 457 (1942); United States v. Mariani, 539 F.2d 915 (2d Cir. 1976).

Since a review of the trial transcript will show that the evidence was overwhelming against the defendant,



the following discussion will be kept to a minimum.

It was conceded by defense counsel during summation that the defendant did not call the Social Security Administration every time he got a job (Tr. 101). Specific evidence of fraudulent intent, however, permeates the proof in this case. The defendant was clearly and unmistakably notified as part of his Application for Benefits, Government Exhibit 1A, of his duty to report working. The defendant in his answer to Question 21 (A4), indicated that he had read this provision. This alone creates an inference that he knew of his duty to report working. The defendant, in his application, set forth additional evidence of his intent to conceal when he deliberately misrepresented his date of employment with Liss Bakery, indicating he terminated work there during September, 1970, and that he had worked for only eight or nine days. In fact, he had terminated on December 15, 1970, and had earned \$675.00 during the course of his employment. This initial misrepresentation was significant because the date of last employment established the onset date for benefits. If the defendant's lie had been accepted, he would have received benefits beginning three months earlier.

On February 9, 1971, the defendant concealed that

he had been previously employed by the Melbourne Hotel when he spoke with a representative of the Social Security Administration (Gov't Ex. 1E, A18). The purpose of the call was to find out when the defendant stopped working, and he convinced the Social Security representative that he "finally" stopped working because of his ailment on December 15, 1970, when in fact he had worked during January, 1971.

The defendant received wages from work activities during every month in 1971, except February. From April, 1971, through December, 1971, he was employed by the S. M. Flickinger Co. and earned as much as \$838.72 in one month (Gov't Ex. 8). None of this work activity was reported before September, 1972, and then it was reported only because the Administration called the defendant in. The defendant also worked from March through May, 1972, without reporting that work activity until more than a month after it ended, again after receiving a specific request from the Administration.

On about June 20, 1972, the defendant received a form letter, Government Exhibit 1H (A30-33), which advised the defendant again, in detail, of the importance of reporting his work activity as follows:



Our records show . . . \$3869.99 has been reported to your social security record for the period beginning January 1972. We need more information from you to decide if you should continue to receive disability benefits.

Your cash benefits may be continued or stopped, depending on whether you are again able to do substantial gainful work. Your medical condition may have improved enough for you to do this. But even if your condition has not improved, your work itself may show that you now have the ability to do substantial gainful work.

To make the decision about your benefits, we need to know just what your duties are in the work you do. How much you are paid for doing this work is also very important. Usually, if you earn more than \$140 a month before deductions, you are doing substantial gainful work.

To give us the information we need about your condition and your work, please answer the questions on the next three pages.

On July 4, 1972, the defendant disclosed only his employment with Syracuse University. He did not give the information on his earnings at Syracuse University requested in blocks numbered three and four. Since the defendant had been apprised in the letter that if he earned more than \$140. a month before deductions, and it was stipulated that he earned from \$395. to \$505. per month during March, April, and May, 1972, this withholding of earnings is indicative of a fraudulent intent to conceal information for the purpose of continuing his benefits.

Three months later the defendant started work in his most substantial position, that of a car salesman for Sam Dell's Dodge Corp. He earned \$76. in August of 1972, and over \$1,000. in September of 1972.

On September 29, 1972, he was again requested to provide work information. He was called into the Syracuse Office of the Social Security Administration. However, he did not tell them about his employment by Sam Dell's Dodge and deliberately misled the interviewer into believing that he was not working by telling her that he stays inside most of the day and that his daily activities consisted of reading and watching T.V. during the day. During the next thirteen months through October, 1973, the defendant earned from \$800.00 to over \$3,000.00 per month at Sam Dell's Dodge but did not voluntarily report these earnings. He only reported them on November 15, 1973, after he was again called upon to make a report to the Social Security Administration (Tr. 39-40).

Four days later the defendant's benefits were cancelled (Gov't Ex. 1N, A34) and during the course of the cessation interview he gave a false exculpatory statement that a Mrs. Wickes had told him during the course of an interview that she remembered him having been in before and that she



told him she would try to find the report she sent to the District Office that he had been working. Mrs. Wickes showed this to be false when she testified that she had spoken with him only once on November 15, 1973 (Tr. 69) and denied advising him that she recalled seeing him on other occasions (Tr. 73).

The defendant further gave the false exculpatory statements set forth in Government Exhibit 1L (A35-38). The statements consisted of his asserting that he came in to report work activity and that he saw people writing the information down and documenting what he had said. These exculpatory statements are both evidence of intent in themselves because they were false, and also evidence that the defendant knew all along of his duty to report work activity.

The record thus shows that the defendant was unmistakably advised that he was required to report when he goes to work. This advice alone creates an inference of knowledge. The defendant earned wages exceeding the \$140.00 cut-off figure, which is emphasized at page 11 of the Appellant's Brief, in twenty-five of the thirty-three months during which he received benefits. When questioned about his daily activities, he gave statements deliberately calculated to deceive the

interviewer into believing that he was not working; his communications with the Social Security Administration are replete with references to the fact that he cannot work, although it was proven that he worked for twenty-eight of the thirty-three months during which he received benefits. He consistently reported work only when he was called in to do so and then only that work of which he believed the Administration was already aware. At the end he falsely stated that he had been making the proper reports all along.

Against this evidence the defendant argues that he gave the information as to his work activities whenever he was called in. This ignores that his duty under the applicable regulations is to report promptly if he engages in any work activity. Title 20, C.F.R. §404.1531 provides as follows:

An individual for whom a period of disability has been established or who is entitled to disability insurance benefits or to child's, widow's or widower's insurance benefits based on disability, shall notify the Administration promptly if: . . . (b) he engages in any work activity . . . .

Because of delays in receiving reports from employers (six to nine months after a quarterly report is filed, Tr. 40-41), the Administration must rely on recipients to



report work without being called in. Otherwise, the time lag would be too great for adequate monitoring of payments. For example, the defendant was not called upon to report his work activities at Melbourne Hotel, Goldman Hotel, or S. M. Flickinger Co. (Super Duper), until September, 1972, about eighteen months after this employment had begun and nine months after it ended. That he admitted being employed by Syracuse University four months after the employment had begun still leaves the factual question of whether he intended prior to that time to conceal such employment.

The defendant also argues that the Social Security Administration acquiesced in his behavior and that this negated the proof of fraudulent intent. He claims that the Administration did not advise him that he might in fact be terminated. The defendant ignores that the Government proved that he was advised in writing in Government Exhibits 1A and 1H that working could cause his benefits to be stopped. The defendant also argues that the Administration did not criticize him for failing to notify it promptly of his work activity. This assertion of lack of criticism however is not based upon anything which your writer has been able to find in the record. This argument, in any event, would be a factual question relating to the defendant's intent and whether

it was induced by anything said or done by the Social Security Administration, which question has been resolved by the jury against the defendant.

## POINT II

### THE BURDEN OF PROOF IN THIS CASE NEVER SHIFTED TO THE DEFENDANT

In Point II of his Brief the defendant argues that the burden of proof shifted to the defendant because of the denial by the trial court of the defendant's motion to dismiss made at the close of the Government's case. The defendant, in substance, is incorporating his argument as to the sufficiency of the evidence and stating that if the evidence is insufficient then the burden of proof shifted. This argument is fallacious, because if the Government did not meet its burden of proof, then the case should be dismissed for that ground alone. When the Government did meet its burden of proof, the defendant had the choice of either proceeding with the defense or resting. The defendant chose the latter course, and there can be no argument that he was compelled to put in damaging evidence because of an



erroneous ruling by the trial judge on the motion to dismiss at the close of the Government's case.

Nor does the defendant point to anything in the jury instructions (to which no exception was taken) whereby a presumption in favor of the Government was created. Such failure to point to anything in the charge, creating a presumption in favor of the Government, immediately distinguishes all of the cases cited by the defendant in Point II of his Brief.

### POINT III

#### THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN LIMITING THE SCOPE OF CROSS-EXAMINATION

During the cross-examination of Government witness Lucille Bravos defense counsel asked the following question:

And as a matter of fact, in 1976, did you receive a memorandum in your Department, or an information determining the amounts that were erroneously paid out during the first six months for the elderly, blind and disabled?

The Government objected to this question as irrelevant and the objection was sustained. No offer of proof was made by

the defendant. The defendant now argues that failure to permit this cross-examination was error.

The question on its face related to a memorandum received by the Social Security Administration concerning amounts that were erroneously paid out during the first six months of 1976. It is clear from the question itself, that the memorandum would not have been received prior to February 4, 1976, the date the Indictment in the instant case was filed. Accordingly, there can be no question that such a memorandum, even if it did exist, had any influence in the decision as to whether or not to prosecute the defendant for fraud. Furthermore, on cross-examination, the defendant elicited testimony from Government witness Ronald Pytko that the defendant was being considered for prosecution for fraud by the Social Security Administration as early as August 27, 1974 (Tr. 77-8). Accordingly, the question asked was entirely irrelevant to the time periods during which the prosecutive decision against the defendant was being made.

Counsel argues now that the question was part of an attempt on his part to demonstrate the tremendous inefficiency of the Social Security Administration. Any inefficiency of the Administration, even assuming, arguendo, that the relevant time periods were involved, is an entirely collateral matter. The Supreme Court has stated with regard to evidentiary rulings by the trial court:



Petitioners have very much the laboring oar in showing that such rulings constitute reversible error, since 'in judicial trials, the whole tendency is to leave rulings as to the illuminating relevance of testimony largely to the discretion of the trial court that hears the evidence.' Hamling v. United States, 418 U.S. 87, 124, 94 S.Ct. 2887, 2911 (1974)

See also United States v. Corr, 543 F.2d 1042 (2d Cir., 1976):

In examining Corr's objections we must also keep in mind that questions relating to the admissibility of evidence, relevancy of proffered evidence in the scope of cross-examination are all questions to be determined subject to the rules of evidence and in doubtful cases subject to the discretion of the trial court, the exercise of which may be overturned on appeal solely upon a showing of clear abuse of that discretion. 543 F.2d at 1051.

Any inefficiency of the Social Security Administration, even if such were proven to exist, would not mitigate or minimize the crime for which the defendant was convicted. Inefficiency is neither a crime in itself, nor does it negate the intent which the defendant has been found to have possessed at the time he concealed his working.

With regard to the possibility that the Government was attempting to use the defendant as a scapegoat, the

defendant fails to consider several points. First, that the period about which he was inquiring, 1976, was subsequent to the time when the prosecutive decision was required to be made. Second, that what he is alleging is in fact a claim of selective prosecution which is required to be raised before trial, pursuant to a Rule 12(b)(2) motion and which is not properly raised before the jury at the trial of the case. United States v. Berrigan, 482 F.2d 171 at 174-5, (3rd Cir. 1973).

#### POINT IV

#### THE TRIAL COURT PROPERLY IMPOSED A SPECIAL CONDITION OF PROBATION THAT THE DEFENDANT MAKE RESTITUTION

In the Judgment and Probation/Commitment Order dated September 16, 1976, the defendant was sentenced to a one year jail term with the last nine months suspended. The defendant was placed on probation for the last nine months subject to "the special condition that defendant make restitution, as directed, under a plan to be formulated by the Probation Office."

Title 18, United States Code, Section 3651 provides, in relevant part as follows:



While on probation and among the conditions thereof, the defendant . . . may be required to make restitution or reparation to aggrieved parties for actual damages or loss caused by the offense for which conviction was had . . . .

When the defendant was convicted of failing to report his working at S. M. Flickinger Co., Inc., Syracuse, New York commencing in April, 1971, the conviction amounted to fraud arising out of employment during the first six months of his disability, since the disability determination was effective on December 15, 1970. (See "Date of Onset", Gov't Ex. 1F). Title 20, C.F.R. §404.308(a) defines the waiting period for benefits payable prior to January, 1973, as "the earliest period of six full consecutive calendar months throughout which the individual has been under a disability." Since the defendant was only entitled to receive benefits upon the condition that he has been under a disability throughout the waiting period (Title 20, C.F.R. §404.306(A)(5)), his fraudulent failure to report working during the waiting period resulted in the entire amount of payments made to him and his dependent children being recoverable by the United States. The defendant may argue that since he was acquitted of the fraudulent concealing of his work activities during January and March, 1971, that there is no direct connection between the crimes for

which he was convicted and the duty to repay. This is resolved against the defendant by the "Notice of Reconsideration Determination" attached as pages A42-43 to the Appellant's Brief in which it is pointed out that the termination was because the defendant returned to substantial gainful work in April, 1971, which is when he was employed by S. M. Flickinger Company, one of the employments upon which he was convicted.

The Notice of Reconsideration Determination specified an overpayment of \$10,079.00 and in the last paragraph advised the defendant of the procedure for obtaining review of the reconsideration determination. (The procedure for determining the amount of an overpayment is set forth in Title 20, C.F.R. §404.501, et seq., and the procedure for appealing the determination is set forth at Title 20, C.F.R. §404.901, et seq.) The amount of the repayment was revised by the letter set forth in the Appellant's Appendix at page A-44, to \$10,809.70.

The simple answer to the arguments raised by defense counsel in Point IV of his Brief that the defendant is not required to repay the money is that he has failed to exhaust his remedies in the administrative forum within



the six months provided by 20 C.F.R. §404.918 and that the amount of the overpayment must now be deemed finally determined.

Since the amount which the defendant owes the Social Security Administration because of the crimes charged in the Indictment is finally determined and since it is obvious that the trial judge had these amounts in mind when he ordered restitution as a special condition of probation, the special condition must stand. See United States v. Landay, 513 F.2d 306, 308 (5th Cir. 1975). See also, Gross v. United States, 228 F.2d 612 (8th Cir. 1956).

#### CONCLUSION

The verdict and judgment of the court below should be affirmed.

June 6, 1977

Respectfully submitted,

PAUL V. FRENCH  
United States Attorney  
Northern District of New York  
Federal Building  
Syracuse, New York 13202  
(315) 423-5165

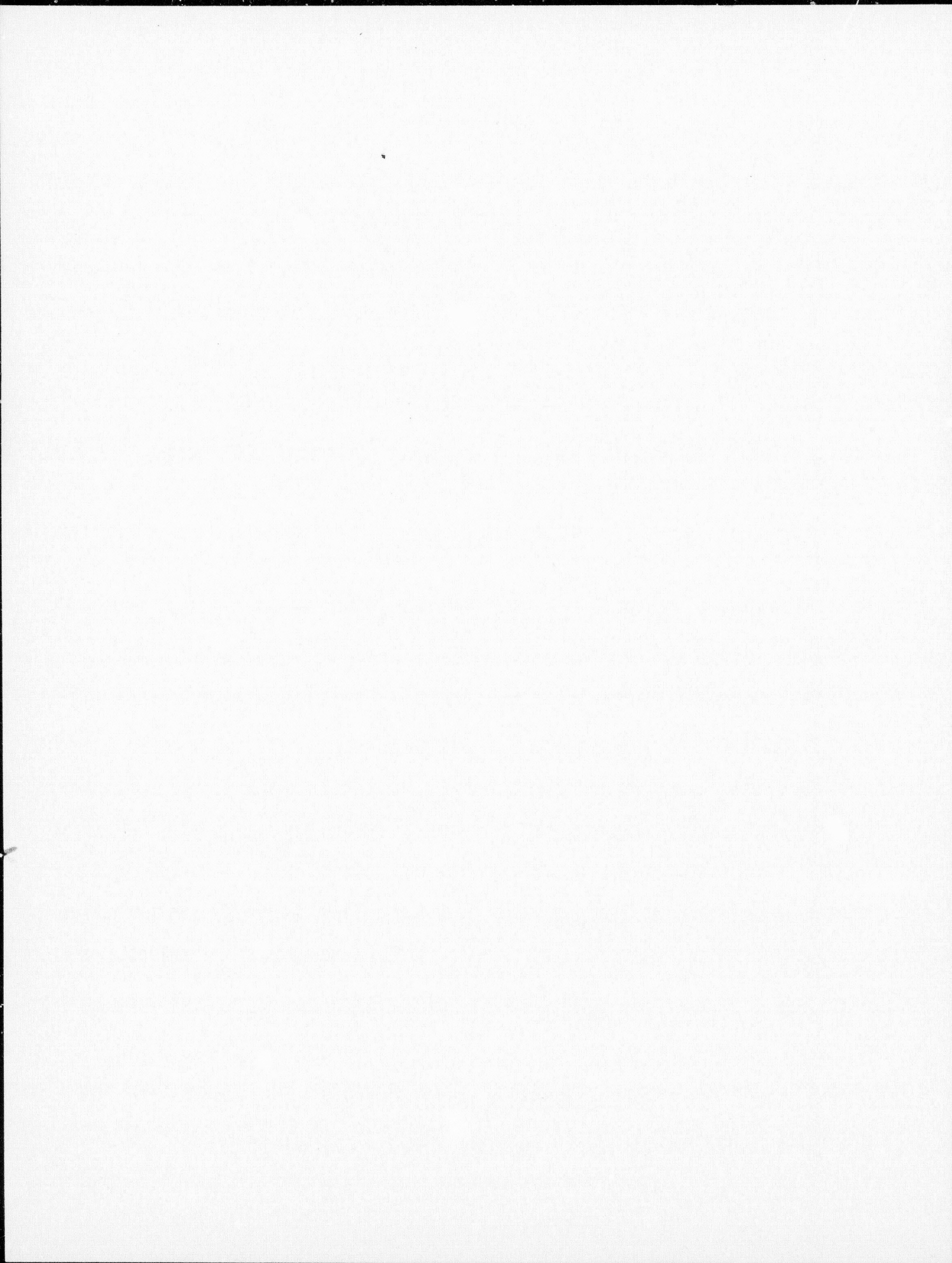
ARTHUR A. CHALENSKI, JR.  
Assistant United States Attorney

ADDENDUM



INDEX

	<u>Page</u>
'42 U.S.C. §408(d) . . . . .	27
Indictment . . . . .	28
Judgment and Probation/Commitment Report . . . . .	37
Government Exhibit 1d . . . . .	38





## 42 U.S.C. Sec. 408(d).

Title 42, United States Code, Section 408 provides, in relevant part, as follows:

Whoever— . . .

(d) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized:

. . .

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

## INDICTMENT.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff

vs.

ALFRED D. MC GILBERRY,

Defendant

I N D I C T M E N T

Criminal No. 76-CR-\_\_\_\_\_

76-CR- 9

THE FEDERAL GRAND JURY CHARGES THAT:

1. At all times material herein, the Social Security Administration of the Department of Health, Education and Welfare was an agency of the United States of America administering provisions of the Social Security Act as amended, and more particularly Chapter VII, Social Security, subchapter II, Federal Old Age Survivors, and Disability Insurance Benefits, as amended.

2. On or about January 4, 1971, the defendant ALFRED D. MC GILBERRY, filed an Application For Disability Insurance Benefits whereby he applied for benefits payable to him.

3. On or about May 6, 1971, the defendant was awarded benefits pursuant to his Application described in Paragraph 2 above commencing in July, 1971, and the defendant received benefits pursuant to said Application from during or about July, 1971, through all times material herein.

4. On or about January 4, 1971, the defendant ALFRED D. MC GILBERRY, filed an Application for Child's Insurance Benefits on behalf of Michelle Mc Gilberry.

5. On or about May 6, 1971, the defendant was awarded benefits pursuant to said Application on behalf of Michelle Mc Gilberry commencing in July, 1971, and the defendant received benefits on behalf of said Michelle Mc Gilbery from during or about July, 1971, through all times material herein.



INDICTMENT.

6. On or about March 10, 1972, the defendant ALFRED D. MC GILBERRY filed an Application for Child's Insurance Benefits on behalf of Monique Y. Mc Gilberry.

7. On or about April 11, 1972, the defendant was awarded benefits pursuant to said Application on behalf of Monique Y. Mc Gilberry commencing retroactively from November, 1971, and the defendant received benefits on behalf of said Monique Y. Mc Gilberry for each month from November, 1971, through all times material herein.

COUNT I

8. Paragraphs 1, 2 and 3 are repeated and realleged as if fully set forth herein.

9. During and about January, 1971, in the Northern District of New York the defendant ALFRED D. MC GILBERRY, was employed by the Melbourne Hotel, Inc. during which employment the defendant received wages of \$117.50.

10. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting his initial and continued right to payments under the aforesaid subchapter II, that is his employment by the Melbourne Hotel, Inc. knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due him and when no payment was authorized.

COUNT II

11. Paragraphs 1, 2 and 3 are repeated and realleged as if fully set forth herein.

12. During and about March, 1971, in the Northern District of New York the defendant, ALFRED D. MC GILBERRY, was employed by Goldman & Goldman, Goldman Hotel, during which employment the defendant received wages of \$135.00.

13. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting his initial and continued right to payments under the aforesaid subchapter II, that is his employment by Goldman & Goldman, Goldman Hotel, knowingly and

INDICTMENT.

willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due him and when no payment was authorized.

COUNT III

14. Paragraphs 1, 2 and 3 are repeated and realleged as if fully set forth herein.

15. From during and about April 1971 through during and about December, 1971 in the Northern District of New York the defendant, ALFRED D. MC GILBERRY, was employed by the S.M. Flickinger Company, Inc. during which employment he received the following wages during the months indicated:

<u>Month</u>	<u>Earnings</u>
April, 1971	\$479.54
May, 1971	778.83
June, 1971	714.52
July, 1971	838.72
August, 1971	206.50
September, 1971	781.38
October, 1971	661.96
November, 1971	323.76
December, 1971	432.25

16. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting his initial and continued right to payments under said subchapter II, that is his employment by the S.M. Flickinger Company, Inc., knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due him and when no payment was authorized.

COUNT IV

17. Paragraphs 1, 2 and 3 are repeated and realleged as if fully set forth herein.

18. From during and about March, 1972 through during and about May, 1972 in the Northern District of New York the defendant, ALFRED D. MC GILBERRY, was employed by Syracuse University during which employment he received the following



INDICTMENT.

wages during the months indicated:

<u>Month</u>	<u>Earnings</u>
March, 1972	\$505.45
April, 1972	791.66
May, 1972	395.83

19. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting his initial and continued right to a payment under said subchapter II, that is his employment by Syracuse University, knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due him and when no payment was authorized.

COUNT V

20. Paragraphs 1, 2 and 3 are repeated and realleged as if fully set forth herein.

21. From during and about August 1972 through during and about December, 1973 in the Northern District of New York the defendant, ALFRED D. MC GILBERRY, was employed by Sam Dell's Dodge Corp. during which employment he received the following wages during the months indicated:

<u>Month</u>	<u>Earnings</u>
August, 1972	\$ 76.00
September, 1972	1,009.39
October, 1972	1,694.78
November, 1972	1,103.73
December, 1972	825.50
January, 1973	1,771.08
February, 1973	1,851.94
March, 1973	2,127.95
April, 1973	1,921.99
May, 1973	2,074.00
June, 1973	1,945.34
July, 1973	3,025.74
August, 1973	1,117.14
September, 1973	877.22
October, 1973	1,384.87
November, 1973	961.30
December, 1973	2,913.42

INDICTMENT.

22. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting his initial and continued right to a payment under said subchapter II, that is his employment by Sam Dell's Dodge Corp., knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due him and when no payment was authorized.

COUNT VI

23. Paragraphs 1, 4, 5 and 9 are repeated and realleged as if fully set forth herein.

24. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting the initial and continued right to payments under said subchapter II of Michelle Mc Gilberry on whose behalf the defendant applied for and was receiving payments, that is the defendant's employment by the Melbourne Hotel, Inc., knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT VII

25. Paragraphs 1, 4, 5 and 12 are repeated and realleged as if fully set forth herein.

26. The defendant, ALFRED D. MC GILBERRY having knowledge of the occurrence of an event affecting the initial and continued right to payments under said subchapter II of Michelle Mc Gilberry on whose behalf he had applied for and was receiving such payments, that is the employment of the defendant by Goldman & Goldman, Goldman Hotel, knowingly and willfully concealed and failed to disclose such an event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.



*INDICTMENT.*COUNT VIII

27. Paragraphs 1, 4, 5 and 15 are repeated and realleged as if fully set forth herein.

28. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting the initial and continued right to payments under said subchapter II of Michelle Mc Gilberry in whose behalf he had applied for and was receiving such payments, that is his employment by the S.M. Flickinger Company, Inc., knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT IX

29. Paragraphs 1, 4, 5 and 18 are repeated and realleged as if fully set forth herein.

30. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting the initial and continued right to payment under said subchapter II of Michelle Mc Gilberry in whose behalf he had applied for and was receiving such payments, that is the employment of the defendant by Syracuse University, knowingly and willfully concealed and failed to disclose such an event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT X

31. Paragraphs 1, 4, 5 and 21 are repeated and realleged as fully set forth herein.

32. The defendant ALFRED D. MC GILBERRY having knowledge of the occurrence of an event affecting the initial and continued right to payment under said subchapter II of Michelle Mc Gilberry in whose behalf the defendant had applied for and was receiving such payment, that is the employment of the defendant by Sam Dell's Dodge Corp., knowingly and willfully concealed and failed to

*INDICTMENT.*

disclose such an event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT XI

33. Paragraphs 1, 6, 7 and 9 are repeated and realleged as if fully set forth herein.

34. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting the initial and continued right to payments under said subchapter II of Monique Y. Mc Gilberry on whose behalf the defendant applied for and was receiving payments, that is the defendant's employment by the Melbourne Hotel, Inc., knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT XII

35. Paragraphs 1, 6, 7 and 12 are repeated and realleged as if fully set forth herein.

36. The defendant, ALFRED D. MC GILBERRY having knowledge of the occurrence of an event affecting the initial and continued right to payments under said subchapter II of Monique Y. Mc Gilberry on whose behalf he had applied for and was receiving such payments, that is the employment of the defendant by Goldman & Goldman, Goldman Hotel, knowingly and willfully concealed and failed to disclose such an event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT XIII

37. Paragraphs 1, 6, 7 and 15 are repeated and realleged as if fully set forth herein.



INDICTMENT.

38. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting the initial and continued right to payments under said subchapter II of Monique Y. Mc Gilberry in whose behalf he had applied for and was receiving such payments, that is his employment by the S.M. Flickinger Company, Inc., knowingly and willfully concealed and failed to disclose such event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT XIV

39. Paragraphs 1, 6, 7 and 18 are repeated and realleged as if fully set forth herein.

40. The defendant, ALFRED D. MC GILBERRY, having knowledge of the occurrence of an event affecting the initial and continued right to payment under said subchapter II of Monique Y. Mc Gilberry in whose behalf he had applied for and was receiving such payments, that is the employment of the defendant by Syracuse University, knowingly and willfully concealed and failed to disclose such an event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

COUNT XV

41. Paragraphs 1, 6, 7 and 21 are repeated and alleged as fully set forth herein.

42. The defendant ALFRED D. MC GILBERRY having knowledge of the occurrence of an event affecting the initial and continued right to payment under said subchapter II of Monique Y. Mc Gilberry in whose behalf the defendant had applied for and was receiving such payment, that is the employment of the defendant by Sam Dell's Dodge Corp., knowingly and willfully concealed and failed to disclose such an event with an intent fraudulently to secure payment in a greater amount than was due and when no payment was authorized.

## INDICTMENT.

In violation of Title 42, United States Code  
Section 408(d).

A TRUE BILL

Charles J. Serowick  
FOREMAN OF THE GRAND JURY

JAMES M. SULLIVAN, JR.  
United States Attorney  
Federal Post Office Building  
Syracuse, New York 13201

Arthur A. Chalenski, Jr.  
Assistant U.S. Attorney

FILED 9/9/76

CLERK, U.S. District Court

By: Edmund A. Kneary



## JUDGMENT AND PROBATION/COMMITMENT REPORT.

United States of America, v.

CR 74-797/110c  
United States District Court

DEFENDANT

Alfred D. McGilberry

Northern District of New York

DOCKET NO.

76-CR-9

## JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (8/74)

COUNSEL

In the presence of the attorney for the government  
the defendant appeared in person on this dateMONTH DAY YEAR  
September 16, 1976☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel

☒ WITH COUNSEL

William J. Fallon

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that  
there is a factual basis for the plea,☐ NOLO CONTENDERE,☒ NOT GUILTYFINDING &  
JUDGMENTThere being a finding/verdict of  
☐ NOT GUILTY Defendant is discharged  
☒ GUILTY.Defendant has been convicted as charged of the offense(s) of social security fraud, in violation  
of Title 42 U.S. Code, Section 408(d).SENTENCE  
OR  
PROBATION  
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of one (1)

year on each of Counts 3, 4, 5, 8, 9, 10, 14 and 15, pursuant to Title 18, United States Code, Section 3651, as amended, with provision that he be confined in a jail-type institution for a period of three (3) months, as provided in the aforesaid section.

Execution of the remainder of the sentence is suspended, and defendant is placed on probation for the remainder of the sentence, to commence upon expiration of confinement, subject to the provisions of the standing probation order of this court and the special condition that defendant make restitution, as directed, under a plan to be formulated by the Probation Office. The sentences imposed on each of Counts 3, 4, 5, 8, 9, 10, 14 and 15 are to run concurrently with each other.

On motion of Attorney William J. Fallon the defendant is released on his own recognizance, pending appeal.

SPECIAL  
CONDITIONS  
OF  
PROBATIONADDITION/  
CONDITION  
OF  
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends,

COMMITMENT  
RECOMMEN-  
DATION

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge☐ U.S. Magistrate

/s/ Lloyd F. MacMahon

Date

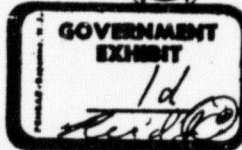
9/16/76

CERTIFIED AS A TRUE COPY ON

THIS DATE 9/21/76

By *L. L. L. L.*  
CLERK  
DEPUTY

## GOVERNMENT EXHIBIT 1d.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE  
SOCIAL SECURITY ADMINISTRATIONDISABILITY UNIT  
STATEMENT OF EMPLOYERForm Approved  
Budget Bureau No. 72-R0247

To process an application for social security benefits, we need a statement of the wages you paid to the individual named below (and any cash tips reported by him to you) for the periods checked. Please give this information even if you have recently reported these wages on tax returns sent to the Internal Revenue Service. Because of the time needed to handle these reports of wages for millions of employees, your return may not yet be readily available to the Social Security Administration. Your cooperation in promptly filling out and returning this statement will help in making an early and accurate decision in this case. An envelope that requires no postage is enclosed for your use. (The filing of an application does not necessarily mean that a currently employed wage earner plans to quit working.)

**Liss Bakery**  
54th St - 1921 N. 54th St.  
Philadelphia, Pa

In reply, Address: SOCIAL SECURITY ADMINISTRATION

5131 Chestnut St.  
Phila., Pa. 19139

TELEPHONE  
SH 8-4501DATE  
1/13/71DISTRICT MANAGER  
Xavier M. Lazarewicz

Enclosure

1. This is to certify that wages in the amounts shown have been PAID during the period(s) checked below to—

NAME OF WAGE EARNER

Alfred McGillberry

SOCIAL SECURITY NUMBER

157-22-7334

ADDITIONAL IDENTIFYING INFORMATION (To be completed by Social Security Administration when applicable)

2. Include the value of all remuneration (exclusive of tips) before withholding of tax whether paid in cash or kind. However, show only the amount of cash wages paid for services performed in a private home as a domestic or in work not in the course of the employer's trade or business. If no wages were paid in the periods checked below, write "None"; if the amounts are unknown, write "Unknown." If this wage earner reported cash tips received in connection with his employment for you, complete item 13 on the back of this form. If you believe any of the amounts shown are not wages or any of the employment is not covered under the Social Security Act, outline your reasons under "Remarks" on the back of this form.

PERIOD	WAGES PAID YEAR 1970	WAGES PAID YEAR 19	WAGES PAID YEAR 19	WAGES PAID YEAR 19
January 1-March 31, inclusive . . . . .	\$ —	\$ —	\$ —	\$ —
April 1-June 30, inclusive . . . . .	\$ —	\$ —	\$ —	\$ —
July 1-September 30, inclusive . . . . .	\$ —	\$ —	\$ —	\$ —
October 1-December 31, inclusive . . . . .	\$ 675.00	\$ —	\$ —	\$ —

☐ COMPLETE ITEMS 14 and 15.☐ DO NOT COMPLETE ITEMS 14 and 15.

In item 3 below use specific terms such as file clerk, traveling or city salesman, maid, plumber, attorney, etc. In item 8 use specific terms such as radio manufacturing, wholesale drugs, retail grocery store, physician's office, private home, etc.

3. EMPLOYEE'S OCCUPATION ✓ BAKER		8. NATURE OF BUSINESS ✓ BAKERY	
4. BUSINESS NAME OF EMPLOYER (Type or Print) ✓ LISS BAKERY INC.		9. WRITTEN SIGNATURE OF EMPLOYER OR AUTHORIZED EMPLOYEE OF FIRM ✓ [Signature]	
5. EMPLOYER'S FEDERAL IDENTIFICATION NO. ✓ AF-23-1523449		10. PRINTED NAME AND TITLE OF PERSON SIGNING ABOVE ✓ JACK NITZBERG Sec	
6. STREET ADDRESS OF EMPLOYER ✓ 1921 N 54TH ST.		11. TELEPHONE NO. OF INDIVIDUAL COMPLETING FORM ✓ GR3-6100	
7. CITY ✓ PHILA.	STATE ✓ PA	ZIP CODE ✓ 19131	12. DATE THIS STATEMENT FILLED OUT ✓ 1/15/71



## GOVERNMENT EXHIBIT 1d.

13. This is to certify that each tip in the amounts shown have been reported by the wage earner named on the front of this form during the period(s) checked below. (Enter the amount of tips included in written reports to you by the wage earner during the quarter, regardless of whether or not the employee social security tax was withheld. (CAUTION-Tip amounts shown below should not be included in the amounts shown in item 2 on the front of this form.)

PERIOD	TIPS REPORTED YEAR 19	TIPS REPORTED YEAR 19	TIPS REPORTED YEAR 19	TIPS REPORTED YEAR 19
January 1-March 31, inclusive . . . . .	\$	\$	\$	\$
April 1-June 30, inclusive . . . . .	\$	\$	\$	\$
July 1-September 30, inclusive . . . . .	\$	\$	\$	\$
October 1-December 31, inclusive . . . . .	\$	\$	\$	\$

14. Did you file employment tax return(s) (Form 941 or 942) for each period shown in item 2 or item 13 of this form?

Yes No

If "No," please identify the period for which no return was filed and state why you did not do so.

15. For returns which you did file, were the wages listed on this form included in your return?

Yes No

(a) If "Yes," please furnish the following information:

Date return(s) were filed:	Period								
	Date Filed								
Page and line number of report where this wage earner was reported:	Page No.								
	Line No.								

(Please use another sheet if more entries are needed.)

(b) If "No," please state below the amount of wages reported and why these wages differ from the amounts shown in items 2 or 13 of this form. If no wages were reported, show "none" and explain below why no wages were reported.

Period									
Amount Reported									

(Please use another sheet if more entries are needed.)

Explanation:

Remarks:

1019001

12.06.19

12.06.19

BEST COPY AVAILABLE

# Affidavit of Service

Records and Briefs  
For State and Federal Courts  
Established 1881

313 Montgomery Street  
Syracuse, New York 13202  
(315) 422-4805

Russell D. Hay/President  
Everett J. Rea/General Manager

## Spaulding Law Printing

June 6, 1977

Re: **U.S.A. vs. Alfred D. McGilberry**

State of New York     )  
County of Onondaga ss.:  
City of Syracuse     )

**EVERETT J. REA,**

Being duly sworn, deposes and says: That he is associated with Spaulding Law Printing Co. of Syracuse, New York, and is over twenty-one years of age.

That at the request of **Paul V. French, U.S. Attorney, Northern District of N. Y.**  
**Arthur A. Chalenski, Jr., Assist. U.S. Attorney,**

Attorney(s) for **Appellee,**

(2)

☒ he personally served three ☒ copies of the printed ☐ Record ☒ Brief ☐ Appendix  
of the above entitled case addressed to.

**WILLIAM J. FALLON, ESQ.**  
**OOT & FALLON**  
**Attorney at Law**  
**501 E. Washington Street**  
**Syracuse, New York 13202**

☒ By depositing true copies of the same securely wrapped in a postpaid wrapper in a  
Post Office maintained by the United States Government in the City of Syracuse, New York, on  
**June 6, 1977**  
☐ By hand delivery

*Everett J. Rea*  
.....  
**EVERETT J. REA**

Sworn to before me this **6th** day of **June, 1977.**

*Donald E. Quinn*  
.....  
Notary Public  
Commissioner of Deeds

cc: **Paul V. French, Esq.**  
**Arthur A. Chalenski, Jr., Esqs.**